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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

MAILED

DEC 28 2007

GROUP 3700

Application Number: 10/523,023
Filing Date: November 07, 2005
Appellant(s): COOK ET AL.

James T. Eller
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed August 31, 2007 appealing from the Office action mailed December 1, 2006.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

For the above reasons, it is believed that the rejections should be sustained.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

No amendment after final has been filed.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

5,496,262	JOHNSON	3-1996
5,353,525	GRIM	10-1994
4,135,500	GORRAN	1-1979

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-2, 7 and 9-10 are rejected under 35 U.S.C. 102(b) as being anticipated by Johnson '262.

Johnson '262 discloses in figures 1-6 a device for use in applying impulse therapy to a limb of the human body comprising an inflatable bladder 6, means (1, 1a), for providing intermittent pulse of fluid to the bladder, means 3, for securing the bladder around the limb and the bladder includes a volume-reducing internal component 34, that is a foam material (urethane).

As for claims 7 and 9, Johnson '262 discloses a device for use in applying impulse therapy to a limb of the human body comprising a flexible pad 6, having an inflatable interior 9, means (1, 1a), for providing intermittent impulse of fluid, means 3, for securing the flexible pad around the limb, the inflatable interior is partially filled with a cellular component 34, providing means for reducing fluid flow rate, the cellular component is a foam material (urethane). In claim 8, no patentable weight was given to how the cellular component is formed.

As for claim 10, Johnson '262 discloses a device for use in applying impulse therapy to a limb of the human body comprising a flexible pad 9, having an inflatable chamber 9, means (1, 1a), for providing intermittent impulse of fluid, means 3, for

securing the flexible pad around the limb, a means 34, for reducing the internal volume of the chamber.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Johnson '262 in view of Gorran.

Johnson '262 discloses in figures 1-3 an inflatable therapy device, substantially as claimed. However, Johnson doesn't disclose the internal component being a gel. Gorran teaches in figure 1 an inflatable device comprising an internal component that is a gel (col. 3, lines 15-20), used to inflate a bladder. It would have been obvious to one having ordinary skill in the art at the time that the invention was made that the gel as taught by Gorran could be substituted for the internal component disclosed by Johnson because either internal component could be used to reduce volume in the inflatable device.

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Johnson '262 in view of Johnson '262.

Johnson '262 discloses in figures 1-6 a device for applying impulse therapy, substantially as claimed. However, Johnson doesn't disclose the internal component being a fluid reservoir. Johnson '262 teaches in figure 3, an internal component 10, that

is a fluid reservoir. It would have been obvious to one having ordinary skill in the art at the time that the invention was made that the internal component being a fluid reservoir as taught by Johnson could be substituted for the internal component disclosed by Johnson because either internal component could be used to reduce volume within the inflatable bladder. The foam is attached to the walls because the device is integral.

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims above, and further in view of Grim '525.

Grim teaches in figure 7 foam 72, having channels (col. 4, lines 60-65), therein. It would have been obvious to one having ordinary skill in the art at the time that the invention was made that the foam disclosed by Johnson could be fabricated with channels as taught by Grim in order to allow air to flow along the channels inside of the inflatable bladder.

(10) Response to Argument

Appellant argues that Johnson '262 doesn't disclose the urethane foam layers (34) being the same as the foam disclosed in Johnson ('945). Johnson '945 discloses the urethane foam layer in the context of an inflatable device that is filled up with air by mouth and the foam layers are used to provide cushion. However, Johnson '262 discloses foam layers (34) that are located inside of an air cell (6) that is inflated by a pump¹. Appellant argues that Johnson '262 doesn't disclose a volume-reducing internal component means for dissipating the flow of fluid into the bladder with accompany reduction in fluid flow rates and noise generated by the flow of fluid during pressurization of the bladder. However, it is inherent that the foam material (34) is a

volume-reducing internal component (located inside the bladder 6 and taking up space therein), and the foam is a means for dissipating the flow of fluid into the bladder while at the same time reducing noise during pressurization of the bladder. Appellant argues that the final rejection doesn't provide any evidence that the foam is a volume reducing internal component means for dissipating the flow of fluid into the bladder. However, the foam material disclosed in the specification of the present invention can be an open cell or closed cell material. Johnson '262 discloses a urethane foam that can be closed cell or open cell. The foam is located inside the bladder, making it an internal volume reducing component. The foam material will dissipate the flow of fluid into the bladder. Thus, the foam disclosed by Johnson is inherent of the foam material claimed in the present invention. As for the time sequence of pressure hold and pressure release, Johnson disclosed a timer 1a that performs this function. Appellant argues that Johnson has to disclose that the foam material (34) is used to perform the function of internal reducing and dissipating the flow of fluid. However, as set forth above, Appellant simply claimed a foam material that could be open cell or closed cell. Johnson discloses a foam material that can be open or closed cell. Thus, the foam material disclosed by Johnson '262 is not only capable of performing the same function by inherent, too (perform the same functions). The foam material disclosed by Johnson is inherent because it has the same structure and it can be used to perform the same function as the foam material in the present invention. Appellant argues that no foam is located in inflatable chambers 10 and 11. However, the foam is still located inside of inflatable chambers 8 and 9, which are a part of inflatable chamber 6. Inflatable

chamber 6 is inflated via pump 1. Appellant argues that chambers 8 and 9 are not fed with intermittently pulsed fluid. However, inflatable cell 6 includes inflatable chambers 8 and 9 (col. 5, lines 33-38). The specification in Johnson does disclose that the cells 8 and 9 may be inflated by the mouth. However, the specification doesn't limit the cells 8 and 9 as only being inflated by the mouth. Since cells 8 and 9 are a part of inflatable cell 6 which is intermittently inflated by pulsed fluid. Then cells 8 and 9 may also be inflated by intermittently inflated pulsed fluid. Appellant argues that Gorran doesn't remedy the deficiencies of Johnson '262. However, Gorran was used to provide a teaching for substituting a gel material to reduce the volume of a bladder versus using the foam material. Gorran discloses that the gel may be substituted for a fluid or air inside a bladder. The gel would reduce the internal volume, dissipate the flow of fluid and reduce noise during pressurization. The gel and the foam are equivalent because both can be used to reduce the internal volume, dissipate the flow of fluid and reduce noise during pressurization. Appellant argues that figure 3 in Johnson isn't a different embodiment. The examiner concurs. However, the chamber 10 can still be interpreted as an internal component that is located inside of air bladder 6. Thus, internal component 10 reduces volume inside of 6, dissipates the flow of fluid and reduces noise. Appellant argues that Grim is concerned with a shoe that doesn't have intermittent pressurization and de-pressurization aspects of Johnson. However, Grim was used as a modifier to provide a teaching of placing channels inside of the foam component to allow the flow of fluid or air over the foam material.

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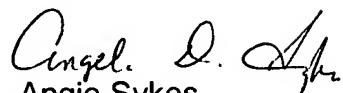
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